

Message Text

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ACTION L-02

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FM AMEMBASSY BRUSSELS

TO SECSTATE WASHDC IMMEDIATE 3620

INFO SECDEF GNERAL COUNSEL IMMEDIATE

USCINCEUR VAIHINGEN GE IMMEDIATE

CINCUSAREUR HEIDELBURG GE IMMEDIATE

DA/TJAG IMMEDIATE

CDR NATO/SHAPE SPT GP BE IMMEDIATE

UNCLAS BRUSSELS 3186

E.O. 11652: N/A

TAGS: MORG, CFED, BE

SUBJECT: TAXATION DIFFICULTIES WITH BELGIAN GOVERNMENT

REF: BRUSSELS 3012

SUMMARY: BELGIANS AGREE THAT AFN TRANSMITTER SITE NOT
LIABLE TO TVA, BUT HOLD FIRM ON APPLICABILITY OF
TVA TO US MILITARY LEASED QUARTERS AND PRESENT THEIR
LEGAL ARGUMENTS. END SUMMARY.

1. WE MET WITH AMBASSADOR VERWILGHEN (PRESIDENT OF
CISHIC) AND SEVERAL REPS FROM FOREIGN, DEFENSE AND
FINANCE MINISTRIES APRIL 10 TO FOLLOW UP ON INITIAL
EMBASSY APPROACH (REFTEL) RE TVA ISSUE.

2. RE AFN SITE, BELGIANS AGREED THAT STATION WAS FOR
OFFICIAL USE OF US FORCES AND THEREFORE
SHOULD BENEFIT FROM TVA EXEMPTION. BELGIAN MOD REP
PROVIDED COPIES OF DOD-MOD AGREEMENT ESTABPISHING
AFN IN BELGIUM TO MINFIN REP. NOTHING FURTHER REQUESTED
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FROM USG ON THIS ISSUE. WE SIAD THAT WE WOULD INFORM

NATO/SHAPE SPT GP (NSSG) OF DECISION, WOULD ASK THEM TO CONTACT ELECTOGAZ AND SUGGEST LATTER RESOLVE MATTER DIRECTLY WITH MINFIN. WE HAVE NOTIFIED NSSG JUDGE ADVOCATE DIVISION OF THIS DECISION BY TELEPHONE.

3. RE TVA LEVIED ON SERVICES PROVIDED SIX US MILITARY-LEASED QUARTERS (CINCUSAREUR MSG. 28 1103Z MAR 75), BELGIAN POSITION WAS FIRM, COMPLETELY COORDINATED AMONG MINISTRIES REPRESENTED, AND NEGATIVE. BELGIANS REFUSED FURTHER EXTENSION OF DEADLINE, NOTING THAT (A) ISSUE HAD BEEN UNDER DISCUSSION WITH NSSG SINCE 1974; (B) ELECTROGAZ HAD HAD TO PAY BELGIAN GOVERNMENT TVA OUTSTANDING ON ELECTRICITY BILLS FOR SUBJECT QUARTERS; (C) BELGIAN GOVERNMENT COULD NOT REQUEST ELECTROGAZ TO GRANT FURTHER EXTENSIONS AS ISSUE WAS BETWEEN ELECTOGAZ AS PRIVATE COMPANY AND NSSG AS CUSTOMER; AND (D) NO EXEMPTIONS FROM TVA COULD BE GRANTED FOR ANY PERSONAL USE OF SERVICES OR OTHER PURCHASES. THEY STRESSED THIS WAS APPLICABLE TO ALL FOREIGN MILITARY IN BELGIUM, NOT JUST NSSG. NSSG HAS BEEN INFORMED BY TELEPHONE OF BELGIAN REFUSAL TO EXTEND APRIL 10 DEADLINE FOR PAYMENT OF BACK TVA DEMANDED.

4. WE REVIEWED US POSITION ON TVA ISSUE, CITING LEGAL PROVISIONS PROVIDED AS ATTACHMENT TO MARCH 14, 1975 LETTER TO AMBASSADOR FROM CINCUSAREUR. IN ENSUING DISCUSSION BELGIAN POSITION WAS EXPLAINED AS FOLLOWS: SOFA, WHICH ENTERED INTO FORCE IN BELGIUM IN 1953, IS PRINCIPAL LEGAL JUSTIFICATION FOR BELGIAN POSITION ON TVA. SPECIFICALLY, ARTICLE II (PARA 7) AND ARTICLE 9 (PARAS 1 AND 8). BELGIUM DRAWS CLEAR DISTICTION BETWEEN "OFFICIAL USE BY THE FORCE" AND USE BY INDIVIDUAL MEMBERS OF THE FORCE (OR THEIR DEPENDENTS). THEY NOTED THIS DISTINCTION WAS APPLIED TO BELGIAN FORCES IN GERMANY. 1953 OFFSHORE PROCUREMENT AGREEMENT ALSO SUBSTANTIATES BELGIAN POSITION, SPECIFICALLY ARTICLE I. FURTHER, THIS AGREEMENT WAS INTENDED TO COVER ONLY MILITARY PURCHASES OF A SIGNIFICANT NATURE AND WAS DESIGNED TO HAVE AN ECONOMIC EFFECT. IT WAS NOT INTENDED TO COVER THOSE US FORCES IN BELGIUM WHO COME UNDER THE SOFA.

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1952 TAX RELIEF AGREEMENT WAS A TEMPORARY AGREEMENT AND HAS BEEN OVERTAKEN BY SUBSEQUENT ENTRY INTO FORCE OF SOFA IN 1953. FURTHER, TVA WAS NOT SPECIFICALLY MENTIONED IN TAX RELIEF AGREEMENT, THOUGH THIS POINT WAS NOT PRESSED SERIOUSLY.

5. WE NOTED BELGIAN AGRUMENTS AND PRESSED HARD ON EXTENSION OF DEADLINE IN ORDER TO CONSIDER AND REPLY TO

BELGIAN ARGUMENTS. BELGIANS POLITELY, BUT FIRMLY, DECLINED REITERATING THAT ISSUE HAD BEEN CONSIDERED FULLY OVER MANY MONTHS (AND NOT ONLY SINCE EMBASSY'S APRIL 4 DEMARCH). THEY STRESSED THAT BELGIAN POSITION WAS FIRM AND THAT THEY SAW NO PURPOSE TO FURTHER DISCUSSIONS OF TVA AS IT APPLIED TO INDIVIDUAL LIVING QUARTERS. AT THE SAME TIME, THEY EXPRESSED A WILLINGNESS TO LISTEN TO FURTHER ARGUMENTS, NOTING DISCUSSIONS MIGHT CONTINUE AFTER TVA WAS PAID (UNDER PROTEST). QUESTION WAS ALSO RAISED ON WHETHER INDIVIDUALS WHO ARE MEMBERS OF NATO/INTERNATIONAL STAFF AND OTHER CATEGORIES CITED IN CINCUSAREUR MSG COULD BE JUSTIFIED AS PART OF US FORCES. AMBASSADOR VERWILGHEN WHO, AS PRESIDENT OF CISHIC, IS RESPONSIBLE ONLY FOR MATTERS AFFECTING SHAPE AND NOT ALL FOREIGN MILITARY IN BELGIUM, NOTED THAT THE TVA ISSUE OF PRINCIPLE EXTENDED BEYOND HIS JURISDICTION. IN THE SPECIFIC CASES UNDER DISCUSSION, THE TVA ISSUE WAS HIS RESPONSIBILITY AS THEY WERE POSED IN A SHAPE CONTEXT. HE IMPLIED PRIVATELY TO US AFTER MEETING THAT REPS FROM OTHER MINISTRIES HAD BEEN PRESENT (IN LARGE NUMBER) TO SHOW THAT BELGIAN GOVERNMENT WAS FULLY COORDINATED ON THE TVA MATTER AS IT MIGHT APPLY TO NON-SHAPE-RELATED ISSUES - HE MENTIONED LOC.

6. COMMENT: WE OBVIOUSLY DEFER TO LEGAL EXPERTS ON VALIDITY OF BELGIAN LEGAL POSITION SET FORTH IN PARA 4 ABOVE. ON THE OTHER HAND, WE CONTINUE TO BE IMPRESSED BY SERIOUSNESS WITH WHICH BELGIAN GOVERNMENT HAS TAKEN ITS POSITION. IF USG IS TO ESCALATE MATTER TO NEXT LEVEL, FOREIGN MINISTRY OR FOREIGN MINISTER HIMSELF, WE KNOW WHAT POSITION THAT MINISTRY WILL TAKE AS ACTION OFFICER FOR MINISTRY ATTENDED OUR MEETING TODAY AND FULLY SUPPORTED AMBASSADOR VERWILGHEN. WE SUGGEST THAT THIS UNCLASSIFIED

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BE BORNE IN MIND WHEN CONSIDERING NEXT STEPS TO TAKE.
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